

**Before the  
U.S. Department of Energy  
Washington, D.C. 20554**

In the Matter of:	)	
	)	Case Number: 2010-CE-01/0202
<b>Mitsubishi Electric &amp; Electronics, USA,</b>	)	
<b>Inc.</b>	)	
	)	

**CONSENT DECREE**

The U.S. Department of Energy ("DOE"), Mitsubishi Electric & Electronics USA, Inc. on behalf of itself and any parent, subsidiary, division or other related entity ("Mitsubishi"), and the Air-Conditioning, Heating and Refrigeration Institute ("AHRI") by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating case number 2010-CE-01/0202 alleging that Mitsubishi violated 42 U.S.C. § 6291, *et seq.* and 10 C.F.R. Part 430.

**I. DEFINITIONS**

For the purposes of this Consent Decree, the following definitions shall apply:

- (a) "Energy Policy and Conservation Act" means the Energy Policy and Conservation Act of 1975, as amended, 42 U.S.C. § 6291, *et seq.*
- (b) "DOE Rules" means DOE's energy conservation regulations found in Title 10, Part 430, of the Code of Federal Regulations.
- (c) "Parties" means the DOE, Mitsubishi, and AHRI.

**II. RECITALS**

WHEREAS, the DOE, pursuant to the Energy Policy and Conservation Act, is responsible for the promulgation and enforcement of the energy conservation requirements set forth in the DOE Rules; and

WHEREAS, the DOE has promulgated energy conservation standards for residential central air conditioners and central heat pumps found at 10 C.F.R. § 430.32; and

WHEREAS, the DOE, on April 21, 2010, issued a Notice of Proposed Civil Penalty alleging that Mitsubishi had failed to submit a Compliance Statement and Certification Report to DOE for each basic model of covered product(s) as required by 10 C.F.R. § 430.62; and

WHEREAS, AHRI submitted to DOE Mitsubishi's Compliance Statement in early January 2010; and

WHEREAS, DOE Rules permit a manufacturer to elect to use a third party to submit the required certification reports to the DOE; and

WHEREAS, Mitsubishi elected to have AHRI act as their third party representative; and

WHEREAS, Mitsubishi had timely provided certification information and a signed compliance statement to AHRI to be submitted to the DOE; and

WHEREAS, AHRI failed to submit a certification report for variable-speed mini-split models on behalf of Mitsubishi including models: MSY-A15NA, MSY-A17NA, MSY-A24NA, MSY-D30NA, MSY-D36NA, MSZ-A09NA, MSZ-FD09NA, MSZ-A12NA, MSZ-FD12NA, MSZ-A15NA, MSZ-A17NA, MSZ-A24NA, MSZ-D30NA, and MSZ-D36NA; and

WHEREAS, Mitsubishi, through AHRI, took immediate corrective actions to provide DOE with the certification reports for these models; and

WHEREAS, DOE, as the agency charged with developing and administering a balanced and coordinated national energy policy, concludes that, in light of the circumstances, this Consent Decree properly balances the policies recognized in the Energy Policy and Conservation Act and is the appropriate way to resolve this matter;

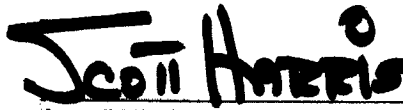
NOW, THEREFORE, in consideration of the foregoing and the mutual agreements set forth below, the sufficiency and adequacy of which are hereby acknowledged, the Parties agree as follows:

### **III. TERMS OF AGREEMENT**

1. **Obligations of Mitsubishi.** Mitsubishi will verify that future Certification Reports are provided to the DOE as required by 10 C.F.R. § 430.62 and be responsible for a voluntary contribution of \$5,000 to be paid on its behalf by AHRI.
2. **Obligations of AHRI.**
  - a. Within twenty (20) calendar days of the effective date of this Consent Decree, AHRI will submit a Compliance Plan to DOE for review. Within forty (40) calendar days of the effective date of this Consent Decree, AHRI will finalize and implement a Compliance Plan approved by the DOE, that will address DOE's concerns that AHRI fulfill its responsibilities as a third party representative. In the event that AHRI and DOE cannot agree on an acceptable Compliance Plan within forty (40) calendar days, AHRI will immediately provide notice to participants in its certification programs that (i) AHRI will no longer serve as their agent for purposes of submitting compliance statements and certification reports to DOE, and (ii) manufacturers are responsible for providing required compliance statements and certification reports directly to DOE.
  - b. AHRI will make a voluntary contribution on behalf of Mitsubishi to the United States Treasury in the amount of Five Thousand Dollars (\$5,000) within ten (10) calendar days of the effective date of this Consent Decree. AHRI will send electronic notification to Laura Barhydt on the date said payment is made to confirm payment.

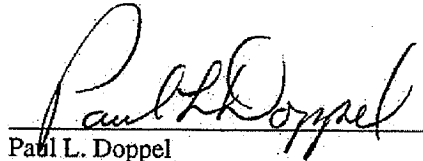
3. **Obligations of the DOE.**
  - a. In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the DOE agrees to dismiss Case Number 2010-CE-01/0202 with prejudice.
  - b. Having posted information regarding the Notice of Proposed Civil Penalty on its website, DOE will promptly post a notice on this settlement and resolution on its website.
4. **Jurisdiction and Governing Law.** This Consent Decree is entered pursuant to the DOE's authority to interpret and enforce its rules and to enter into its own agreements interpreting and applying those rules. Mitsubishi and DOE agree that the DOE has jurisdiction over Mitsubishi and exclusive jurisdiction over the matters contained in this Consent Decree and has the authority to enter into this Consent Decree. This Consent Decree shall be governed by and construed and enforced in accordance with applicable Federal law. DOE and AHRI agree that DOE does not have jurisdiction over AHRI. AHRI voluntarily undertakes the obligations set forth in paragraph 2 in order to promptly address the issues identified in this matter.
5. **Effective Date.** The Parties agree that this Consent Decree shall become effective on May 7, 2010.
6. **Waivers.** Mitsubishi and AHRI waive any and all rights each, respectively, may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree. If any Party (or the United States on behalf of the DOE) brings a judicial action to enforce the terms of this Consent Decree, no other party shall contest the validity of the Consent Decree, and Mitsubishi shall waive any statutory right to a trial *de novo*. Mitsubishi and AHRI hereby agree to waive any claims each, respectively, may otherwise have under the Equal Access to Justice Act, 5 U.S.C. § 504, relating to the matters addressed in this Consent Decree.
7. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties regarding the failure of AHRI to submit certification reports for models listed in its variable speed mini-split subdirectory. The Parties further agree that this Consent Decree does not constitute either adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance with the requirements of the Energy Policy and Conservation Act or the DOE's Rules. The Parties agree that this Consent Decree is for settlement purposes only and that by agreeing to this Consent Decree, Mitsubishi does not admit or deny noncompliance, violation or liability for violating the Energy Policy and Conservation Act or the DOE's Rules.
8. **Modifications.** This Consent Decree cannot be modified without the advance written consent of all Parties.
9. **Authorized Representative.** Each party represents and warrants to the other that it has full power and authority to enter into this Consent Decree.

10. Counterparts. This Consent Decree may be signed in any number of counterparts (including by facsimile), each of which, when executed and delivered, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.



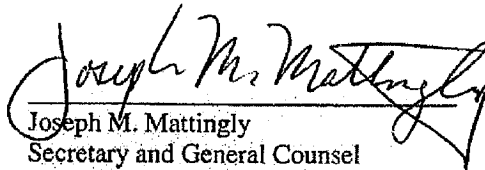
Scott Blake Harris  
General Counsel  
U.S. Department of Energy

May 7, 2010  
Date



Paul L. Doppel  
Director of Factory Liaison, and  
Government Affairs  
Mitsubishi Electric & Electronics U.S.A., Inc.

May 7, 2010  
Date



Joseph M. Mattingly  
Secretary and General Counsel  
Air-Conditioning, Heating and Refrigeration  
Institute

May 7, 2010  
Date